

# SENATE MOTION

**MR. PRESIDENT:**

**I move** that Engrossed House Bill 1001(ss) be amended to read as follows:

- 1 Page 4, line 28, delete "the amount" and insert "**two hundred**
- 2 **forty-three million dollars (\$243,000,000), which is the amount of**
- 3 **certain reversions made by state agencies.**".
- 4 Page 4, delete lines 29 through 37.
- 5 Page 4, line 38, after "and" insert "**thirty-five thousandths**
- 6 **(1.035).**".
- 7 Page 4, delete line 39.
- 8 Page 4, line 42, after "and" insert "**thirty-five thousandths**
- 9 **(1.035).**".
- 10 Page 5, delete line 1.
- 11 Page 7, delete line 19.
- 12 Page 7, line 20, delete "(E)" and insert "**(D)**".
- 13 Page 7, line 24, delete "(F)" and insert "**(E)**".
- 14 Page 7, line 27, delete "(G)" and insert "**(F)**".
- 15 Page 7, line 31, delete "(H)" and insert "**(G)**".
- 16 Page 10, delete lines 6 through 24.
- 17 Page 18, line 8, after "(2)" insert "**is inventory (as defined in**
- 18 **IC 6-1.1-3-11) that**".
- 19 Page 47, between lines 31 and 32, begin a new paragraph and insert:
- 20 "SECTION 30. IC 6-1.1-21.2 IS ADDED TO THE INDIANA
- 21 CODE AS A NEW CHAPTER TO READ AS FOLLOWS
- 22 [EFFECTIVE JANUARY 1, 2003]:
- 23 **Chapter 21.2. Tax Increment Replacement**
- 24 **Sec. 1. (a) This chapter applies to an allocation area established**
- 25 **prior to January 1, 2003.**
- 26 **(b) This chapter does not apply to the portion of an allocation**
- 27 **area described under subsection (a) that is expanded after**
- 28 **December 31, 2002.**
- 29 **Sec. 2. Except as otherwise provided, the definitions in IC 36**

1 apply throughout this chapter.

2 Sec. 3. As used in this chapter, "allocation area" refers to an  
3 area that is established under the authority of any of the following  
4 statutes and in which tax increment revenues are collected:

- 5 (1) IC 8-22-3.5.
- 6 (2) IC 36-7-14.
- 7 (3) IC 36-7-14.5.
- 8 (4) IC 36-7-15.1.
- 9 (5) IC 36-7-30.

10 Sec. 4. As used in this chapter, "base assessed value" means the  
11 base assessed value as that term is defined or used in:

- 12 (1) IC 8-22-3.5-9(a);
- 13 (2) IC 36-7-14-39(a);
- 14 (3) IC 36-7-14-39.3(c);
- 15 (4) IC 36-7-14.5-12.5;
- 16 (5) IC 36-7-15.1-26(a);
- 17 (6) IC 36-7-15.1-26.2(c);
- 18 (7) IC 36-7-15.1-35(a);
- 19 (8) IC 36-7-15.1-53;
- 20 (9) IC 36-7-15.1-55(c);
- 21 (10) IC 36-7-30-25(a)(2); or
- 22 (11) IC 36-7-30-26(c).

23 Sec. 5. As used in this chapter, "district" refers to:

- 24 (1) an eligible entity, as defined in IC 8-22-3.5-2.5;
- 25 (2) a redevelopment district, for an allocation area established  
26 under:
  - 27 (A) IC 36-7-14; or
  - 28 (B) IC 36-7-15.1; or
- 29 (3) a special taxing district, as described in:
  - 30 (A) IC 36-7-14.5-12.5(d); or
  - 31 (B) IC 36-7-30-3(b).

32 Sec. 6. As used in this chapter, "governing body" means the  
33 following:

- 34 (1) For an allocation area created under IC 8-22-3.5, the  
35 commission (as defined in IC 8-22-3.5-2).
- 36 (2) For an allocation area created under IC 36-7-14, the  
37 redevelopment commission.
- 38 (3) For an allocation area created under IC 36-7-14.5, the  
39 redevelopment authority.
- 40 (4) For an allocation area created under IC 36-7-15.1, the  
41 metropolitan development commission.
- 42 (5) For an allocation area created under IC 36-7-30, the  
43 military base reuse authority.

44 Sec. 7. As used in this chapter, "property taxes" means:

- 45 (1) property taxes, as defined in:
  - 46 (A) IC 36-7-14-39(a);
  - 47 (B) IC 36-7-14-39.3(c);
  - 48 (C) IC 36-7-15.1-26(a);

- (D) IC 36-7-15.1-26.2(c);
- (E) IC 36-7-15.1-53(a);
- (F) IC 36-7-15.1-55(c);
- (G) IC 36-7-30-25(a)(3); or
- (H) IC 36-7-30-26(c); or

(2) for allocation areas created under IC 8-22-3.5, the taxes assessed on taxable tangible property in the allocation area.

**Sec. 8.** As used in this chapter, "special fund" means:

- (1) the special funds referred to in IC 8-22-3.5-9(e);
- (2) the allocation fund referred to in IC 36-7-14-39(b)(2);
- (3) the allocation fund referred to in IC 36-7-14.5-12.5(d);
- (4) the special fund referred to in IC 36-7-15.1-26(b)(2);
- (5) the special fund referred to in IC 36-7-15.1-53(b)(2); or
- (6) the allocation fund referred to in IC 36-7-30-25(b)(2).

**Sec. 9.** As used in this chapter, "tax increment replacement amount" means the tax increment replacement amount determined under section 11 of this chapter.

**Sec. 10.** As used in this chapter, "tax increment revenues" means the property taxes attributable to the assessed value of property in excess of the base assessed value.

**Sec. 11.** (a) By July 15 of a year, the governing body shall estimate the tax increment replacement amount for each allocation area under the jurisdiction of the governing body for the next calendar year.

(b) The tax increment replacement amount is the amount determined in STEP THREE of the following formula:

**STEP ONE:** The governing body shall estimate the amount of tax increment revenues it would receive in the next calendar year if the property tax replacement credits payable with respect to the general fund levies imposed by all school corporations with jurisdiction in the allocation area were determined under IC 6-1.1-21 as in effect on January 1, 2001.

**STEP TWO:** The governing body shall estimate the amount of tax increment revenues it will receive in the next calendar year after implementation of the increase in the property tax credits payable under IC 6-1.1-21, as amended by the general assembly in 2002, with respect to general fund levies imposed by all school corporations with jurisdiction in the allocation area.

**STEP THREE:** Subtract the STEP TWO amount from the STEP ONE amount.

**Sec. 12.** (a) A tax is imposed each year on all taxable property in the district in which the governing body exercises jurisdiction.

(b) Except as provided in subsections (c) and (d), the tax imposed under this section shall be automatically imposed at a rate sufficient to generate the tax increment replacement amount determined under section 11(b) of this chapter for that year.

(c) The legislative body of the unit that established the district

1 may:

2 (1) reduce the amount of the tax to be levied under this  
3 section; or

4 (2) determine that no tax should be levied under this section.

5 (d) This subsection applies to a district in which the total  
6 assessed value of all allocation areas in the district is greater than  
7 ten percent (10%) of the total assessed value of the district. Except  
8 as provided in section 14(d) of this chapter, a tax levy imposed  
9 under this section may not exceed the lesser of:

10 (1) the tax increment replacement amount; or

11 (2) the amount that will result from the imposition of a rate  
12 for the tax levy that the department of local government  
13 finance estimates will cause the total tax rate in the district to  
14 be one hundred ten percent (110%) of the rate that would  
15 apply if the tax levy authorized by this chapter were not  
16 imposed for the year.

17 Sec. 13. (a) A district described in section 12(d) of this chapter  
18 may appeal to the department of local government finance for a  
19 distribution from the property tax replacement fund if the district  
20 has imposed the maximum tax levy permissible under section 12(d)  
21 of this chapter.

22 (b) The maximum amount of distribution under this section may  
23 not exceed the amount determined by subtracting the amount of  
24 the tax levied under section 12(d) of this chapter from the tax  
25 increment replacement amount determined under section 11(b) of  
26 this chapter.

27 (c) An appeal under this section must be filed before September  
28 20 of a year.

29 Sec. 14. (a) The department of local government finance shall  
30 approve an appeal filed under section 13 of this chapter if the  
31 department determines that:

32 (1) the governing body's estimate of the tax replacement  
33 amount under section 11 of this chapter is reasonable;

34 (2) a tax levy in excess of the amount determined under  
35 section 12(d) of this chapter would:

36 (A) create a significant financial hardship on taxpayers  
37 residing in the district in which the governing body  
38 exercises jurisdiction;

39 (B) significantly reduce the benefits from the increase in  
40 the property tax credits payable under IC 6-1.1-21, as  
41 amended by the general assembly in 2002, with respect to  
42 general fund levies imposed by all school corporations with  
43 jurisdiction in the district; or

44 (C) have a disproportionate impact on small businesses or  
45 low income families or individuals; and

46 (3) the governing body has made reasonable efforts to limit its  
47 use of the special fund for the allocation area to  
48 appropriations for payments of:

- (A) the principal and interest on loans or bonds;
- (B) lease rentals on leases;
- (C) amounts due on other contractual obligations; and
- (D) additional credits described in IC 8-22-3.5-10(a), IC 36-7-14-39.5(c), IC 36-7-14.5-12.5(d)(5), IC 36-7-15.1-26.5(e), IC 36-7-15.1-35(d), or IC 36-7-30-25(b)(2)(E).

(b) The department shall make a final determination on an appeal filed under this section by November 1 of a year.

(c) If the department approves an appeal filed under this section, it shall order a distribution from the property tax replacement fund in the amount determined under section 13(b) of this chapter in the same manner as distributions are made under IC 6-1.1-21-4.

(d) If the department denies an appeal filed under section 13 of this chapter, or does not grant the maximum permissible distribution under section 13(b) of this chapter, the legislative body of the unit that established the district may increase the levy imposed under this chapter to an amount that, when combined with any distribution received under this chapter, does not exceed the tax increment replacement amount.

**Sec. 15. (a) A tax levied under this chapter shall be certified by the department of local government finance to the auditor of the county in which the district is located and shall be:**

(1) estimated and entered upon the tax duplicates by the county auditor; and

(2) collected and enforced by the county treasurer; in the same manner as state and county taxes are estimated, entered, collected, and enforced.

(b) As the tax is collected by the county treasurer, it shall be transferred to the governing body and accumulated and kept in the special fund for the allocation area.

(c) A tax levied under this chapter:

(1) is exempt from the levy limitations imposed under IC 6-1.1-18.5; and

(2) is not subject to IC 6-1.1-20.

(d) A tax levied under this chapter and the use of revenues from a tax levied under this chapter by a governing body do not create a constitutional or statutory debt, pledge, or obligation of the governing body, the district, or any unit."

Page 50, line 13, delete "The" and insert "Except as provided in IC 6-2.2-3 (exempt entities), the".

Page 50, line 41, delete "." and insert "reduced by income that is exempted from taxation under IC 6-3 by the Constitution and statutes of the United States."

Page 51, line 9, delete "reduced by income that is exempted" and insert ":

(A) increased or decreased by income, gain, loss, or

deductions of the entity separately stated pursuant to Section 702(a) of the Internal Revenue Code; and

(B) reduced by income that is exempted from taxation under IC 6-3 by the Constitution and statutes of the United States."

Page 51, line 15, delete "reduced by" and insert ":

(A) increased or decreased by income, gain, loss, or deductions of the entity separately stated pursuant to Section 1366(a)(1)(A) of the Internal Revenue Code; and

(B) reduced by income that is exempted from taxation under IC 6-3 by the Constitution and statutes of the United States."

Page 51, delete lines 16 through 17.

Page 51, line 20, delete ", the term refers to" and insert "**that differs from the definitions described in subdivisions (1) through (4), the term means**".

Page 51, delete lines 32 through 41, begin a new paragraph and insert:

"**Sec. 7. "Pass through entity" means an entity that under Section 702(a), Section 1366(a), or any other provision of the Internal Revenue Code passes through income of the entity to the owner of the entity and requires the income of the entity to be included in the income of the owner of the entity, regardless of whether cash or anything of value is distributed to the owner.**"

Page 53, between lines 8 and 9, begin a new paragraph and insert:

"**Sec. 10. The following entities are exempt from this article:**

(1) A qualified subchapter S subsidiary (as defined in Section 1361 of the Internal Revenue Code) that does not elect to be a taxpayer for federal income tax purposes.

(2) A qualified REIT subsidiary (as defined in Section 856 of the Internal Revenue Code) that does not elect to be a taxpayer for federal income tax purposes.

(3) A limited liability company that has a single member, is disregarded as a taxable entity for federal income tax purposes, and does not elect to be a taxpayer for federal income tax purposes."

Page 53, line 28, delete "in Indiana (as defined in IC 6-3-2-2)." and insert "**within Indiana as determined by applying:**

(1) the allocation rules of IC 6-3-2-2, in the case of nonbusiness income; and

(2) the apportionment rules of IC 6-3-2-2 in the case of business income.

IC 6-3-2-2 applies to the computation of an entity's taxable adjusted gross income, notwithstanding that the entity is not a corporation (as defined in IC 6-3-1-10) or a nonresident person (as defined in IC 6-3-1-3 and IC 6-3-1-14)."

Page 53, line 39, delete "." and insert "**or files a combined return under IC 6-3-2-2 or IC 6-5.5-5-1.**"

Page 53, line 42, after "group." insert "**A taxpayer that is a**

1 member of a group of entities filing a combined return shall  
 2 compute taxable adjusted gross income under this article  
 3 separately as if the taxpayer were not part of the group.

4 **Sec. 5.** An exemption of an entity from this article under  
 5 IC 6-2.2-3 does not exempt a taxpayer from taxation under this  
 6 article on pass through income received by the owner of the exempt  
 7 entity, unless the taxpayer also is exempt under IC 6-2.2-3.

8 **Sec. 6. (a)** In computing taxable adjusted gross income, a  
 9 taxpayer is not entitled to a deduction for any loss that:

10 (1) is deducted in computing the taxpayer's taxable income for  
 11 the taxable year under Section 702(a), Section 1366(a), or any  
 12 other provision of the Internal Revenue Code that requires  
 13 losses of an entity to be passed through and included in the  
 14 income of the owner of the entity; and

15 (2) is passed through to the taxpayer from the entity that is a  
 16 taxpayer under this article.

17 (b) The deductions disallowed by this section shall be added  
 18 back to the taxpayer's adjusted gross income before the allocations  
 19 and apportionment provisions of IC 6-3-2-2 are applied in  
 20 determining adjusted gross income under section 1 of this chapter.

21 **Sec. 7.** The deductions provided by IC 6-2.2-6 shall be allowed  
 22 in computing taxable adjusted gross income."

23 Page 54, delete lines 6 through 8, begin a new paragraph and insert:

24 "Sec. 2. The deductions allowed by sections 3 and 4 of this  
 25 chapter shall be subtracted from the taxpayer's adjusted gross  
 26 income before the allocation and apportionment provisions of  
 27 IC 6-3-2-2 are applied in determining the taxpayer's taxable  
 28 adjusted gross income under IC 6-2.2-5-1.

29 **Sec. 3.** In computing taxable adjusted gross income, a taxpayer  
 30 is entitled to a deduction to the extent of any income or gain that:

31 (1) is included in the taxpayer's taxable income for the taxable  
 32 year under Section 702(a), Section 1366(a), or any other  
 33 provision of the Internal Revenue Code that requires income  
 34 or gain of an entity to be passed through and included in the  
 35 income of an owner of the entity; and

36 (2) is passed through to the taxpayer from an entity that is a  
 37 taxpayer subject to taxation under this article.

38 (b) The amount that may be deducted under this section shall  
 39 not be included in either the numerator or the denominator of the  
 40 taxpayer's sales factor for purposes of applying the allocation or  
 41 apportionment rules under IC 6-3-2-2 to this article.

42 **Sec. 4.** In computing taxable adjusted gross income, a taxpayer  
 43 that is a corporation shall be entitled to the deduction under  
 44 IC 6-3-2-12 if it meets the qualifications for claiming the deduction  
 45 under that provision."

46 Page 54, line 24, delete "sections 4 and 5" and insert "section 4".

47 Page 54, delete lines 30 through 36.

48 Page 56, delete lines 27 through 42.

- 1 Delete page 57.
- 2 Page 59, line 27, delete "data" and insert **"information"**.
- 3 Page 59, line 28, delete "The term does not" and insert **"The term**
- 4 **does not include any of the following:**
- 5 **(1) Value added services in which computer processing**
- 6 **applications are used to act on the form, content, code, or**
- 7 **protocol of the information for purposes other than**
- 8 **transmission.**
- 9 **(2) Value added services providing text, graphic, video, or**
- 10 **audio program content for a purpose other than transmission.**
- 11 **(3) The transmission of video programming or other**
- 12 **programming:**
- 13 **(A) provided by; or**
- 14 **(B) generally considered comparable to programming**
- 15 **provided by;**
- 16 **a television broadcast station or a radio broadcast station,**
- 17 **including cable TV, direct broadcast satellite (DBS/DISH),**
- 18 **and digital television (DTV)."**
- 19 Page 59, delete line 34, begin a new line block indented and insert:
- 20 **"(2) Natural gas, either mixed with another substance or pure,**
- 21 **used for heat, light, cooling, or power."**
- 22 Page 59, delete lines 37 through 39, begin a new line block indented
- 23 and insert:
- 24 **"(5) Sewage (as defined in IC 13-11-2-200)."**
- 25 Page 59, line 40, delete "(7)" and insert **"(6)"**.
- 26 Page 95, line 40, delete "\$1, 200)," and insert **"(\$1, 200),"**.
- 27 Page 96, line 1, delete "(c)" and insert **"(b)"**.
- 28 Page 96, line 4, delete "(a)".
- 29 Page 96, line 5, delete "\$1, 200)," and insert **"(\$1, 200),"**.
- 30 Page 96, line 9, delete "\$1, 200)," and insert **"(\$1, 200),"**.
- 31 Page 102, line 2, delete "\$1, 200)," and insert **"(\$1, 200),"**.
- 32 Page 102, line 19, delete "\$1, 200)," and insert **"(\$1, 200),"**.
- 33 Page 125, delete lines 7 through 10, begin a new paragraph and
- 34 insert:
- 35 **"(p) In addition:"**.
- 36 Page 135, line 12, delete "shall" and insert **"may"**.
- 37 Page 222, line 25, delete "Revenue" and insert **"Notwithstanding**
- 38 **IC 6-7-1-14,"**.
- 39 Page 222, line 26, after "July 1, 2002," insert **"and in the possession**
- 40 **of a distributor"**.
- 41 Page 224, line 31, delete "July 1," and insert **"December 1,"**.
- 42 Page 225, between lines 21 and 22, begin a new paragraph and
- 43 insert:
- 44 **"SECTION 178. [EFFECTIVE JULY 1, 2002] (a) The definitions**
- 45 **in IC 6-2.3-1, as added by this act, apply throughout this**
- 46 **SECTION.**
- 47 **(b) The department of state revenue shall adopt the initial rules**



1 and prescribe the initial forms to implement IC 6-2.3 (utility  
 2 receipts tax), as added by this act, before December 1, 2002. The  
 3 department of state revenue may adopt the initial rules required  
 4 under this SECTION in the same manner that emergency rules are  
 5 adopted under IC 4-22-2-37.1. A rule adopted under this  
 6 SECTION expires on the earlier of the following:

7 (1) The date that the rule is superseded, amended, or repealed  
 8 by a permanent rule adopted under IC 4-22-2 or another rule  
 9 adopted under this SECTION.

10 (2) July 1, 2004.

11 (c) IC 6-2.3, as added by this act, applies to taxable years  
 12 beginning after December 31, 2002, and to short taxable years  
 13 described in subsection (d).

14 (d) This subsection applies to a taxpayer that was doing business  
 15 in Indiana during a taxable year determined under the Internal  
 16 Revenue Code for federal income tax purposes that:

17 (1) begins before January 1, 2003; and

18 (2) ends after December 31, 2002.

19 The initial taxable year for a taxpayer under IC 6-2.3, as added by  
 20 this act, is a short taxable year. Notwithstanding IC 6-2.3-1-11, as  
 21 added by this act, the initial taxable year of a taxpayer under  
 22 IC 6-2.3, as added by this act, begins January 1, 2003. The initial  
 23 taxable year of the taxpayer ends on the day immediately  
 24 preceding the day that the taxpayer's next taxable year under the  
 25 Internal Revenue Code begins. The tax imposed under IC 6-2.3, as  
 26 added by this act, for the initial taxable year of the taxpayer is  
 27 equal to the tax computed under IC 6-2.3-2, as added by this act,  
 28 for the taxpayer's full taxable year under the Internal Revenue  
 29 Code multiplied by a fraction. The numerator of the fraction is the  
 30 number of days remaining in the taxpayer's taxable year after  
 31 December 31, 2002, and the denominator is the total number of  
 32 days in the taxable year under the Internal Revenue Code for the  
 33 purposes of federal income taxation."

34 Page 229, line 6, delete "2002," and insert "**2001**,".

35 (Reference is to EHB 1001(ss) as printed June 13, 2002.)

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Senator BORST